Government of the District of Columbia
Office of the Chief Financial Officer

Fitzroy Lee
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Phil Mendelson** **Chairman, Council of the District of Columbia**
FROM:	**Fitzroy Lee** **Chief Financial Officer**
DATE:	**July 13, 2022**
SUBJECT:	**Fiscal Impact Statement – District Government Paid Leave Enhancement Amendment Act of 2022**
REFERENCE:	**Bill 24-615, Committee Print as provided to the Office of Revenue Analysis on July 11, 2022**

Conclusion

Funds are not sufficient in the fiscal year 2022 budget and fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill.

The bill costs $23.0 million in fiscal year 2023 and a total of $94.4 million through fiscal year 2026. Of these costs, $4.8 million in fiscal year 2023 and $19.6 million over the four-year financial plan period have been included in the approved fiscal year 2023 through fiscal year 2026 budget and financial plan. The bill's provision to allow 12 weeks of medical, bonding, and family leave, including two weeks of prenatal leave, will cost $18.2 million in fiscal year 2023 and $74.8 million over the four-year financial plan period. The costs for this provision are not included in the budget and this provision is subject to its inclusion of its fiscal effect in an approved budget and financial plan.

Background

District government employees are permitted to receive up to 8 weeks of paid leave following the occurrence of a qualifying family event, defined as birth or adoption/placement of a child, or care of a family member suffering a serious health condition. The bill amends the District of Columbia Government Comprehensive Merit Personnel Act (Act) to update definitions and procedures around the paid leave program. It also establishes paid leave for an employee's own serious health condition. The definition of serious health condition is amended to include "the occurrence of a stillbirth and the medical care related to a miscarriage."

The bill revises the definition of family member. The bill changes the frequency of when employees may take paid parental or paid family leave to cap the leave at a certain amount of workweeks in the 12-month period following the qualified leave event. It allows employees who may have used less than the maximum workweeks for a qualifying event to use the remainder of their allotment for a second qualifying event. It amends the Act to provide for the following maximum amounts of leave as of January 1, 2023:

- Up to 8 weeks for a qualifying parental leave event
- Up to 8 weeks for a qualifying family leave event
- Up to 2 weeks for a qualifying medical leave event

Employees who used unpaid, sick or annual leave for a qualifying medical leave event between October 1, 2022 and January 1, 2023, may apply between January 1, 2023 and February 28, 2023 for retroactive paid leave and a restoration, if applicable, of annual or sick leave.

The bill also provides for further additional leave under amendatory Section 1204a(b) to the Act, subject to appropriations. Section 1204a(b) provides the following duration of leave events in a 12-month period:

- Up to 12 weeks for a qualifying parental leave event
- Up to 12 weeks for a qualifying family leave event
- Up to 12 weeks for a qualifying medical leave event
- Up to 2 weeks for a qualifying pre-natal event, provided that such time shall count toward the maximum time of a qualifying medical leave event.

The bill changes the minimum usage of family and parental leave from one-day increments to one-hour increments. However, an agency may maintain the one-day increment limit provided that limit is necessary to avoid additional costs to the agency.

The bill provides that qualifying medical or prenatal leave is available in addition to sick leave and it is not required to exhaust sick leave prior to using medical or prenatal leave. Employees who use any types of qualifying leave during a probationary period shall enter into a one-year continuation of service agreement and shall be liable to repay the District if they voluntarily separate prior to that year. The bill allows for the appropriate length of leave to be determined using the International Classification of Diseases, Tenth Revision (ICD-10)[1] along with any health care provider or caretaker assessments.

The bill revamps and combines the District's Annual Leave Bank and Voluntary Leave Transfer Program into a newly established Paid Family and Medical Leave Supplemental Bank (PFML Bank). Employees may voluntarily contribute annual, restored, or universal leave to the bank (up to a maximum of half of their annual accruals) to be used by anyone or to be used by a specified employee. The PFML Bank will also automatically receive deposits of leave that employees have not used and may not be carried over at the end of a year. The District Department of Human Resource (DCHR) may provide the PFML Bank's leave to employees who apply for it and who have a qualifying family leave or medical leave event. Such employees must have exhausted all other types of leave available,

[1] or subsequent revisions by the World Health Organization

including sick leave and annual leave, and a maximum of eight weeks may be made available to the employee from the bank. The Mayor must provide an annual report on contributions to, and use of, the PFML Bank.

The bill requires the District to revise its contract for short-term disability insurance so that the insurance does not require that the employee receives qualifying paid leave benefits prior to being eligible for disability benefits and that disability benefits are not offset by paid leave benefits.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2022 budget and fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill.

The bill costs $23 million in fiscal year 2023 and a total of $94.4 million through fiscal year 2026. Of these costs, $4.8 million in fiscal year 2023 and $19.6 million over the four-year financial plan period have been included in the approved fiscal year 2023 through fiscal year 2026 budget and financial plan. The bill's provision to allow 12 weeks of medical, bonding, and family leave, including two weeks of prenatal leave, will cost $18.2 million in fiscal year 2023 and $74.8 million over the four-year financial plan period. The costs for this provision are not included in the budget and this provision is subject to its inclusion of its fiscal effect in an approved budget and financial plan.

To administer the new paid leave provisions and PFML leave bank, DCHR will require one term employee for two years to serve as a policy writer responsible for drafting materials including regulations, implementing guidance, training decks and references, and updates to existing materials. DCHR will also require three new human resources specialists to review and process leave bank and medical claim paid leave requests. DCHR will also require a contractor with a medical claims review specialty to review certain medical leave claims. In total, DCHR will spend $472,000 in personnel and contractor resources beginning in fiscal year 2023 and a total of $1.7 million through the end of the financial plan on all sections of the bill other than Section 1204a(b). DCHR will require two additional HR specialists and additional contractor funding to conduct compliance reviews of family and parental leave claims to implement Section 1204a(b). In total, Section 1204a(b) will cost DCHR $248,000 in fiscal year 2023 and $1.0 million through the end of the financial plan.

DCHR received enhancements in the fiscal year 2023 budget for upgrades and improvements to DCHR's information system (Peoplesoft). The Peoplesoft changes required by the various provisions of the bill can be included in the scope of the previously planned and budgeted upgrades.

Providing paid medical leave for an employee's own serious health condition is expected to increase personnel costs for various agencies due to two factors. First, agencies will have fewer reduced salary payments because employees are currently taking unpaid leave (leave without pay, or LWOP) to treat or recuperate from their serious health condition, and these reduced salary payments are factored into agency budgets as vacancy savings. To estimate the rate of employees who typically need to rely on LWOP for a serious health condition, the Office of Revenue Analysis (ORA) identified that approximately one percent of employees used unpaid leave authorized as leave under the Family and Medical Leave Act[2] but did not also use any paid family leave. The estimated cost of reduced LWOP resulting from employees with serious health conditions switching from unpaid leave to paid leave

[2] D.C. Official Code § 32–501. et. seq.

is approximately $3 million in fiscal year 2023 and $12.3 million over the financial plan. These costs include the expansion of paid medical leave to twelve weeks under the new Section 1204a(b).

Second, providing paid medical leave for one's own health condition is also expected to increase leave-taking by employees. While some work will be deferred or re-assigned during employee absence, agencies that employ essential workers, including agencies that have minimum staffing level requirements, will rely on paying overtime to current staff when they have a need to back-fill due to employee absence.

National workplace surveys indicate that the unaffordability of unpaid leave is the most common reason for not using available unpaid leave[3], and in lieu of taking leave for a health condition, medical treatment is frequently postponed or foregone.[4] ORA estimates that leave-taking by employees suffering a serious medical condition will increase District-wide from approximately 1700 employees annually to approximately 2650. ORA also estimates that 2% of all employees (approximately 800) are currently using an average of 60 hours of annual leave for their serious health condition, and the bill will allow such employees to take more total leave as they replace the use of annual leave for illness care with annual leave for vacation and regular time off. The cost of back-filling District government essential employees for additional hours of leave due to the new paid medical leave benefit is estimated at $11.6 million in fiscal year 2023 and $47.5 million over the financial plan. These costs include the expansion of paid medical leave to twelve weeks under Section 1204a(b).

Section 1204a(b)'s provisions to expand the paid family leave program (parental and family care leave) will increase overtime costs in some agencies when essential employees increase the length of their leave-taking for child bonding and family care events. Some agencies will also see reduced LWOP because some employees currently taking paid family leave are extending their leave using LWOP. Section 1204a(b) also adds a prenatal benefit for two weeks of prenatal medical care for employees with a diagnosed pregnancy. The total estimated costs of back-filling essential personnel, reduced LWOP for the additional four weeks of child bonding and family care leave, and the new prenatal leave benefit, are $7.9 million in fiscal year 2023 and $32.3 million over the financial plan.

Clarifying the provisions around when employees can take allowable leave after a qualified leave event and allowing for multiple qualifying events in a 12-month period do not have a cost. Providing employees with the ability to take leave in one-hour increments instead of the current one-day increments may have a cost for some agencies if overtime schedules no longer coincide with employees' leave. However, the bill provides that agencies may continue to require paid leave events to be taken in minimum one-day increments if additional costs would be incurred. Requiring the District to enter into a short-term disability insurance contract with different terms does not have a cost to the District. Such policies are taken out by employees at their option, and employees pay the full premium. There are also no costs to the remaining provisions of the bill.

[3] Employee and Worksite Perspectives of the Family and Medical Leave Act: Results from the 2018 Surveys (dol.gov), Exhibit 6-3
[4] Ibid, Exhibit 6-4

District Government Paid Leave Enhancement Amendment Act of 2022 Total Cost Dollars in Thousands					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Funded Sections of Bill:					
DCHR Additional Personnel[a]	$392	$400	$301	$306	$1,400
DCHR contract[b]	$80	$82	$84	$86	$332
Total DCHR costs	$472	$482	$385	$392	$1,731
Two weeks Medical Benefit					
Reduced LWOP	$1,264	$1,286	$1,309	$1,332	$5,191
Back-filling essential employees	$3,101	$3,155	$3,210	$3,266	$12,732
Total Two weeks Medical Benefit[c]	$4,365	$4,441	$4,519	$4,598	$17,923
Total Funded Sections of Bill	**$4,837**	**$4,923**	**$4,904**	**$4,990**	**$19,654**
Additional Costs of Section 1204a(b):					
Additional DCHR Costs[d]	$248	$252	$256	$260	$1,016
Additional 10 weeks Medical Benefit					
Reduced LWOP	$1,738	$1,768	$1,799	$1,830	$7,135
Back-filling essential employees	$8,461	$8,609	$8,760	$8,913	$34,743
Total 10 weeks Medical Benefit	$10,199	$10,377	$10,559	$10,743	$41,878
Additional 4 weeks Parental and Family Care Benefit					
Reduced LWOP	$1,188	$1,209	$1,230	$1,252	$4,879
Back-filling essential employees	$4,982	$5,069	$5,158	$5,248	$20,457
Total Parental and Family Care	$6,170	$6,278	$6,388	$6,500	$25,336
New Prenatal Benefit	$1,590	$1,618	$1,646	$1,675	$6,529
Total Additional Costs of Section 1204a(b)	**$18,207**	**$18,525**	**$18,849**	**$19,178**	**$74,759**
Total Costs of Bill	**$23,044**	**$23,448**	**$23,753**	**$24,168**	**$94,413**

Table Notes:

(a) One term (2-year) employee and three permanent employees. Includes fringe.
(b) Contract for medical claims review.
(c) Because agencies are not likely to be evenly impacted by leave-taking for serious health conditions, funding has been budgeted in the Non-departmental agency.
(d) Includes salary and fringe for two permanent employees, and additional contract amount for medical claims review.